

**BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III**

**IN THE MATTER OF:**

|                                           |   |                                   |
|-------------------------------------------|---|-----------------------------------|
| Atlantic Wood Industries, Inc.            | : |                                   |
| Superfund Site                            | : |                                   |
| Portsmouth, Virginia                      | : |                                   |
|                                           | : |                                   |
| Atlantic Wood Industries, Inc.            | : | <b>Docket No. 03-2003-0004-DC</b> |
|                                           | : |                                   |
| <b>Respondent</b>                         | : |                                   |
|                                           | : |                                   |
| Proceeding Under Sections                 | : |                                   |
| 106(a) and 122(a) of the Comprehensive    | : |                                   |
| Environmental Response, Compensation, and | : |                                   |
| Liability Act of 1980, as amended         | : |                                   |
| by the Superfund Amendments and           | : |                                   |
| Reauthorization Act of 1986,              | : |                                   |
| 42 U.S.C. §§ 9606(a) and 9622 (a)         | : |                                   |

**ADMINISTRATIVE ORDER BY CONSENT  
FOR REMOVAL RESPONSE ACTION**

The parties to this Administrative Order by Consent ("Consent Order" or "Order") Atlantic Wood Industries, Inc. ("Respondent") and the United States Environmental Protection Agency ("EPA"), having agreed to the entry of this Consent Order, it is therefore Ordered, that:

**I. JURISDICTION AND GENERAL PROVISIONS**

1.1 This Consent Order is issued pursuant to the authority vested in the President of the United States by Sections 106(a) and 122(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. §§ 9606(a) and 9622(a); delegated to the Administrator of EPA by Executive Order No. 12580, 52 Fed. Reg. 2923 (January 29, 1987); and further delegated to the Regional Administrators of EPA. This Consent Order pertains to property located at 3950 Elm Avenue in the city of Portsmouth, Virginia, 23704. For the purposes of this Consent Order, the areas to which this action pertains will hereinafter be referred to as the Acetylene and Abrasive Blast Materials Areas of the Atlantic Wood Industries Site or "the Site", and are further described in paragraph 3.2.a. below (see Attachment A).

1.2 The Respondent agrees to undertake all actions required by, and to comply with all requirements of, this Consent Order including any modifications hereto (the "Work").

1.3 The Work shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 C.F.R. Part 300; and with CERCLA.

1.4 The Respondent consents to and will not contest EPA's authority or jurisdiction to issue or to enforce this Consent Order.

1.5 Respondent's participation in this Consent Order shall not constitute an admission of liability or of EPA's findings, conclusions or determinations contained in this Consent Order and Respondent hereby reserves its rights as set forth in Paragraph XV.

## **II. STATEMENT OF PURPOSE**

In entering into this Consent Order, the mutual objectives of EPA and Respondent are to conduct a removal action, as defined in Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), to abate, mitigate and/or eliminate the release or threat of release of hazardous substances at those two adjoining portions of the Site known as the acetylene sludge disposal area and the abrasive blast materials disposal area and respectively identified on the attached Attachment A and referred to herein as the "Acetylene Area" and the "Abrasive Blast Materials Area" ("ABM Area") by excavating hazardous substances from the Acetylene Area and properly disposing them off-site and capping potentially hazardous portions of the ABM Area to contain/prevent the migration of hazardous substances from the ABM Area, as described in Section VIII below. Furthermore, it is the objective of EPA and the Respondent to conduct such Work consistent with simultaneous implementation of similar response activities performed by the United States Navy on adjoining property owned by the United States Navy (hereinafter the "Shipyard Annex Federal Facility Site or NNSY South Gate Annex").

## **III. FINDINGS OF FACT**

3.1 The Respondent is Atlantic Wood Industries, Inc. ("Respondent"), a Georgia corporation whose principal office is located in Savannah, Georgia. The Savannah Creosoting Company, a Maryland Corporation, built a wood preserving plant located at 3950 Elm Avenue, Portsmouth, Virginia 23704 in 1926. From 1926 until 1944, additional parcels of land were added to the plant. On or about December 28, 1944, the name of the Savannah Creosoting Company was changed to Atlantic Creosoting Company, Inc. On or about September 1, 1978, the name of the corporation was changed to Atlantic Wood Industries, Inc. Finally, on or about October 25, 1985, the name of the corporation was changed to Atlantic Wood Assets, Inc. On or about June 19, 1985, a Georgia corporation named Atlantic Interim Inc. was incorporated. Its name was

changed on or about November 21, 1985, to Atlantic Wood Industries, Inc. On or about November 30, 1985, the operating assets of Atlantic Wood Assets, Inc., including the wood preserving plant referred to above, were sold to Atlantic Wood Industries, Inc., the Georgia corporation. Since that time, Atlantic Wood Industries, Inc., the Georgia corporation, has owned and operated the plant. On or about January 1, 1986, all of the stock of Atlantic Wood Industries, Inc., the Georgia corporation, was sold to an Employee Stock Ownership Plan for the benefit of the Georgia corporation's employees. According to Respondent, on January 14, 2000, all of the stock of Respondent was sold to private investors.

3.2 The former wood preserving plant referred to in Section 3.1, above, occupies 47.5 acres of land bounded on the north by Elm Street, on the west by a [Virginia Electric and Power Company] right of way, on the south by the Shipyard Annex Federal Facility Site and the Portsmouth City School Board, respectively, and on the east by the Southern Branch of the Elizabeth River (the "AWI Property"). For the purposes of this Order, removal activities will be limited to that portion of the AWI Property known as the Acetylene Area and the ABM Area. The Acetylene Area and the ABM Area are contiguous and collectively occupy approximately 3 acres located on the parcel east of Burton's Point Road along the Atlantic Wood Industries southern property boundary. (See Attachment A).

3.3 a. Respondent, or its predecessors, utilized creosote, and periodically pentachlorophenol ("PCP"), to preserve dimensional lumber on the property from 1926 through 1985. In 1985, Respondent ceased active wood treatment operations on the property. The treatment operation incorporated numerous large storage tanks, piping and smaller in-line storage tanks to store and convey creosote and PCP to the treatment cylinders inside a wood treatment building. The wood treatment operation generated waste process water which was tainted with the respective wood preservative being utilized (e.g., creosote or PCP). From at least 1940 until October 1985, a concrete pit was located in the central portion of the Facility. This pit was used to recover preservative from process water and until 1972, some excess process water was discharged to an area immediately south of the railroad spur that extends out into the Southern Branch of the Elizabeth River. Treated wood was intermittently stored on nearly all areas of the property. Soils and sediments on the property, and underlying ground water, became contaminated with Creosote and PCP due to leaks in storage tanks and dripping of wood preservatives from treated wood being stored on the property.

Creosote is an oily brown to black liquid which is a complex mixture of organic compounds. A typical creosote composition includes 85% polynuclear aromatic hydrocarbons ("PAHs"), 10% phenolic compounds and 5% nitrogen-, sulfur-, or oxygen-containing heterocycles. Specific PAH compounds present in creosote include, but are not limited to, naphthalene, phenanthrene, fluoranthene, anthracene, pyrene, and benzo(a)pyrene. Technical grade PCP used to treat wood typically contains 85-90% PCP, other chlorophenolic compounds, and chlorinated dibenzodioxins and furans (0.1%). The technical grade PCP was diluted to an 8% solution which was used in wood treatment. PCP and several of the PAHs are classified as probable human carcinogens.

b. The U.S. Department of the Navy ("Navy") owned and operated an acetylene gas manufacturing facility at the Norfolk Naval Shipyard ("NNSY"), located northwest of the Atlantic Wood Industries property beginning in 1942. The acetylene gas production process generated a calcium hydroxide ( $\text{Ca}(\text{OH})_2$ ) slurry waste stream ("acetylene sludge"). From 1942 to the mid-1960's, the acetylene sludge was pumped by the Navy through a buried pipe, then discharged to a low lying marshy area at the northeast corner of the NNSY South Gate Annex and at the Acetylene Area on Respondent's property. This disposal area drains directly to the adjacent Elizabeth River. Acetylene sludge material has been measured with pH of 12.8. The total volume of acetylene sludge estimated to be present in the Acetylene Area and on the adjoining NNSY South Gate Annex is 19,600 cubic yards.

c. The Navy routinely utilized abrasive blast materials ("ABM") to strip old paint from vessels being reconditioned at the NNSY. The blasting process resulted in waste ABM which was comprised of a mixture of "sandy" grit with paint chips. In addition, abrasive blast materials were routinely released in an open-air setting, allowing dispersion of wind-borne materials. ABM waste was disposed on, or migrated to, the ABM Area. Such waste materials are present and exposed along a portion of the northern boundary of the Navy's adjoining property. In addition, the Navy has discharged storm water to the Site via surface runoff and a sewer discharge.

Abrasive blast material mixed with paint chips has been analyzed and documented to contain elevated levels of several inorganic hazardous substances, including, but not limited to arsenic, beryllium, copper, chromium, lead and zinc.

3.4 a. On or about July 23, 1987, EPA Region III and Respondent entered into an Administrative Order by Consent (US EPA Docket No. III-87-24-DC) pursuant to which Respondent performed an immediate removal action and an RI/FS for the Site. On or about August 5, 1994, EPA Region III and Respondent entered into a First Amendment to the Administrative Order by Consent addressing needs to supplement the requested removal action in light of newly discovered contaminant migration.

b. Sampling performed between 1987 and 1990 by EPA, the Virginia State Water Control Board, and the Respondent, during conduct of the RI/FS confirmed the presence of chemicals associated with wood preservation in on-site soils, sediments and ground water. Specific hazardous substances identified include, but are not limited to: pentachlorophenol, naphthalene, phenanthrene, fluoranthene, anthracene, pyrene, and benzo(a)pyrene.

c. The Atlantic Wood Industries Site was placed on the National Priorities List ("NPL") on June 10, 1986. *See* 51 Fed. Reg. 21099. The Acetylene and ABM Areas are also on the adjoining Shipyard Annex Federal Facility Site, which was placed on the National Priorities List, Federal Facility Section, on July 22, 1999. *See* 64 Fed. Reg. 39878.

d. In December 1996, sampling performed by the U.S. Navy at the Acetylene and ABM Areas confirm that surface and subsurface soils and sediments contained elevated levels of several hazardous substances including, but not limited to, arsenic, beryllium, chromium, copper, lead, zinc, pentachlorophenol, naphthalene, phenanthrene, fluoranthene, anthracene, pyrene, and benzo(a)pyrene. Site workers, trespassers and ecological receptors have the potential to be exposed to the above mentioned hazardous substances. Additionally, contaminants in soils may migrate to underlying ground water or be eroded by wind and storm water to off-property locations.

3.5 a. The area surrounding the Site is zoned for industrial use. Other wood treating facilities that were not owned by the Respondent have been located in the past near the AWI Property. The Site is a relatively flat area with elevations ranging from mean sea level to approximately 11 feet above mean sea level. Stormwater at the Acetylene Area and the ABM Area drains into the South Branch of the Elizabeth River via an outfall permitted under the National Pollution Discharge Elimination System ("NPDES").

b. There are three separate water-bearing zones underlying the area in which the Site is located. The first water-bearing zone, the Upper Columbia Sand, is 4 to 18 feet below the surface. The second water-bearing zone, the Lower Columbia Sand, is approximately 40 feet below the surface and is separated from the Upper Columbia Sand by a blue clay layer. The third water-bearing zone, the Yorktown Regional Aquifer, is approximately 100 feet below the surface. The Upper Columbia Sand and the Yorktown Regional Aquifer contain fresh water. Due to salt water encroachment, the Upper Columbia Sand has become brackish.

c. The Southern Branch of the Elizabeth River, which borders the Site to the east, is a tidal estuary flowing through a highly industrialized area, which includes oil storage facilities, chemical facilities and fertilizer plants. The Commonwealth of Virginia has designated the Southern Branch of the Elizabeth River as IIB. This classification represents water that is contaminated. Class IIB waters may be used for swimming and fishing, but taking shellfish is prohibited. The Site is approximately twelve miles upstream of the Chesapeake Bay.

d. Coastal wetlands of greater than 5 acres occur within a mile of the Site. The wetlands are located upstream on a reach of the river under significant tidal influence.

e. Residential areas are located within 4,000 feet of the Site. Residential population within a 1-mile radius of the Site is approximately 3,045.

3.6 Arsenic, beryllium, chromium, copper, lead, zinc, pentachlorophenol, naphthalene, phenanthrene, fluoranthene, anthracene, pyrene, and benzo(a)pyrene are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. §9601(14), because they are listed at 40 C.F.R. § 302.4.

3.7 Acetylene sludge (i.e., calcium hydroxide) has a measured pH ranging up to 12.8. Calcium hydroxide is a hazardous waste having characteristics of corrosivity identified by 40 C.F.R. § 261.22 because it has a pH of 12.5 or greater.

3.8 On or about December 12, 2002, the Respondent and the United States Navy entered into a separate "Agreement to Implement a Non-Time Critical Removal Action" ("AWI/Navy Agreement") which addresses funding and work-related issues between Respondent and the Navy.

3.9 Based on the information described above, on December 17, 2002, the Regional Administrator determined that a threat to public health, welfare and/or the environment exists due to the actual release of hazardous substances from the Site. The determination was made pursuant to a Finding of Imminent and Substantial Endangerment.

#### **IV. CONCLUSIONS OF LAW**

4.1 The Atlantic Wood Industries, Inc. Superfund Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4.2 The Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

4.3 a. Arsenic, beryllium, chromium, copper, lead, zinc, pentachlorophenol, naphthalene, phenanthrene, fluoranthene, anthracene, pyrene, and benzo(a)pyrene are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), because they are listed at 40 C.F.R. § 302.4.

b. Acetylene sludge (i.e., calcium hydroxide) at the Site is a "hazardous waste having characteristics of corrosivity" identified by 40 C.F.R. § 261.22 because its pH is 12.5 or greater.

4.4 "Hazardous substances", as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been disposed of at the Atlantic Wood Industries, Inc. Site and are currently present there.

4.5 The presence of hazardous substances at the Site and the past, present, and/or potential migration of hazardous substances from the Site constitutes an actual and/or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

4.6 (a) Respondent currently owns and operates the property utilized for the disposal of hazardous substances and subject to this CERCLA removal action. Accordingly, Respondent is an "owner or operator of a vessel or a facility" (the Site) within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

(b) Respondent, at the time of disposal, owned and operated the property utilized for the disposal of hazardous substances and subject to this CERCLA removal action. Accordingly, Respondent is a "person who at the time of disposal of hazardous substance owned or operated any facility (the Site) at which such hazardous substances were disposed of" within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

4.7 EPA has determined that the Respondent is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

## **V. DETERMINATIONS**

Based on the Findings of Fact and Conclusions of Law set forth above, and upon EPA's review of information for the Administrative Record, EPA has determined that:

5.1 The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.

5.2 The Work is necessary to protect the public health and welfare and the environment.

5.3 Because there is a threat to public health or welfare or the environment, a removal action is appropriate to abate, minimize, stabilize, mitigate or eliminate the release or threat of release of hazardous substances at or from the Site.

5.4 The Work is consistent with long term remedial action required at the Site.

## **VI. PARTIES BOUND**

6.1 This Consent Order shall apply to and be binding upon EPA and its agents, and upon Respondent and its agents, successors, and assigns. Neither a change in ownership or corporate or partnership status of the Respondent, nor a change in ownership or control of the Site, shall in any way alter Respondent's responsibilities under this Consent Order.

6.2 In the event of any change in ownership or control of the Site, Respondent shall notify EPA in writing at least thirty (30) calendar days in advance of such change and shall provide a copy of this Consent Order to the transferee in interest of the Site prior to any agreement for transfer.

6.3 In the event that Respondent files for or is placed into bankruptcy, Respondent shall notify EPA within three days of such event.

6.4 The Respondent shall provide a copy of this Consent Order to all contractors, subcontractors, supervisory personnel, laboratories and consultants retained by Respondent to conduct any

portion of the Work to be performed by Respondent pursuant to this Consent Order. Respondent shall require in any and all contracts related to performance of the Work pursuant to this Consent Order that the Work that is the subject of such contract be performed within the time and in the manner set forth in this Consent Order.

6.5 The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms of this Consent Order and to execute and legally bind Respondent to this Consent Order.

## **VII. NOTICE TO THE STATE**

Notice of issuance of this Consent Order has been given to the Commonwealth of Virginia pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

## **VIII. RESPONSE ACTION PLAN DEVELOPMENT AND IMPLEMENTATION**

8.1 Respondent shall commence and complete performance of the response actions described in Paragraph 8.3, which is consistent with the National Contingency Plan, 40 C.F.R. Part 300 (the "NCP"). The Work shall be performed within the time periods specified herein.

8.2 Within ten (10) business days of the effective date of this Consent Order, Respondent shall notify EPA in writing of the identity and qualifications of the contractor, subcontractor, supervisory personnel, and other persons who will be primarily responsible for developing the Response Action Plan ("RAP") required by this Section. Respondent shall further notify EPA in writing of the identity and qualifications of all contractors, subcontractors, supervisory personnel and other persons selected by Respondent who will conduct all or any portion of the response action no less than 21 days prior to commencement of the response action to be performed by such persons. Respondent shall ensure that all contractors, subcontractors, supervisory personnel and/or other persons retained to perform the response action shall meet the applicable Occupational Safety and Health Administration ("OSHA") requirements as defined in 29 C.F.R. § 1910.120. The Respondent's selection of all contractors, subcontractors, supervisory personnel and other persons who will perform the response action; the Respondent's Project Coordinator designated pursuant to Section IX; and any replacements to any such persons are subject to disapproval by EPA at any time. In the event of any such disapproval by EPA, Respondent shall notify EPA within seven (7) calendar days of receipt of such EPA disapproval of the person(s) who will replace the one(s) whose selection was disapproved by EPA. If a person's selection is disapproved by EPA, that person shall not perform such specified response action.

8.3 Respondent shall accomplish the following items:



- a. Acetylene Area: (i) Excavate and remove calcium hydroxide from the acetylene sludge area depicted in Attachment A, estimated to lie to a depth of 12 to 16 feet below the current ground surface, and properly dispose off-Site in accordance with paragraph 8.3(d) below. Confirm removal of calcium hydroxide from the acetylene sludge area by visual inspection. The excavation shall not be backfilled until removal of the calcium hydroxide has been completed, and is accepted by EPA. Photographs of the final excavation will be placed in the project file. (ii) Provide treatment of excavated materials, as necessary, for acceptance at an appropriate treatment, storage and/or disposal facility in accordance with paragraph 8.3(d) and 8.12, below;
- b. ABM Area: Construct an engineered impermeable cap, functionally equivalent to a RCRA Subtitle C landfill cap, sufficient to prevent the infiltration of precipitation through soils over the ABM area depicted in Attachment A. The multi-layered engineered cap must achieve a  $1.0 \times 10^{-7}$  cm/sec permeability performance standard and provide for proper drainage.
- c. Provide site security sufficient to prevent unauthorized access by persons not conducting or overseeing the response action required by this Consent Order;
- d. Transport all waste materials and hazardous substances designated for off-site disposal to an EPA-accepted disposal facility in accordance with U.S. Department of Transportation requirements, and assure their proper disposal in accordance with applicable laws and regulations, including Section 121(d)(3) of CERCLA;
- e. Restore area excavated in accordance with subparagraph 8.3(a) by backfilling with clean fill placed such that the final elevations would provide appropriate tidal fluctuation to support a tidal wetland. Revegetate acetylene sludge area by planting intertidal vegetation species, as necessary. Restore area capped in accordance with subparagraph 8.3(b) with a vegetated cover suitable to control erosion, or a suitable wear surface appropriate for future use of the property.
- f. Provide site specific health and safety measures, including preparation and implementation of a Health and Safety Plan ("HASP") for actions to be performed at the Site, to protect the health and safety of workers, other personnel and the public from the hazardous substances and work-related health and safety hazards during performance of the response action specified herein. The HASP shall, as appropriate, provide for proper decontamination of personnel and equipment, monitoring and control of offsite migration of hazardous substances during the performance of activities at the Site and protection of public health from exposure to hazardous substances during the conduct of activities at the Site pursuant to this Consent Order. Health and safety requirements in the HASP shall be at least as stringent as those set forth in Occupational Safety and Health Administration and EPA requirements, including but not limited to, requirements

contained in 29 C.F.R. § 1910.120 and/or EPA Standard Operating Safety Guides (June 1992);

g. Obtain a Hazardous Waste Generator Identification Number;

h. Provide for post-removal Site control activities consistent with Section 300.415 (k) of the NCP, 40 C.F.R. § 300.415 (k); and EPA's "Policy on Management of Post Removal Site Control", (OSWER Directive 9360.2-02 (December 3, 1989)). Such activities shall include, but not be limited to, arrangements with State or local governments for performance of actions that will ensure the integrity of the Work performed at the Site pursuant to this Consent Order, including but not limited to protection of the cap in paragraph 8.3(b) above, through operation and maintenance, actions that will limit access to the Site, measures that will ensure continuous review of monitoring data. For purposes of this paragraph, "arrangements with State or local governments for the performance of actions" shall mean submitting, by agreement or otherwise, to enforceable requirements determined by the State or local government to meet the criteria set forth in this paragraph, and shall include public participation and comment as required by the State or local government and the NCP.

i. Develop and follow an expeditious schedule for implementation of the Response Action Plan ("RAP").

8.4 Within fifteen (15) business days of the effective date of this Consent Order, Respondent shall submit to EPA for approval a RAP detailing the response action to be implemented for the items specified in paragraph 8.3 above. To the extent that information concerning the details of a particular item does not yet exist so that it can be described in the RAP, the RAP shall set forth an expeditious schedule and plan for submittal of RAP supplement(s) to EPA for approval, which supplement(s) shall fully detail such items. All references to the review, approval and enforcement of the RAP shall also be applicable to any RAP supplement(s). The RAP shall include, among other things, a schedule for expeditious performance of the response actions required by this Consent Order. The RAP shall be consistent with the NCP and shall be subject to approval by EPA according to the provisions of paragraphs 8.5 and 8.9 below.

8.5 EPA will review the RAP and notify the Respondent of EPA's approval or disapproval of the RAP. In the event of disapproval, EPA will specify the deficiencies in writing. The Respondent shall respond to and correct the deficiencies identified by EPA and resubmit the RAP to EPA within ten (10) business days of receipt of EPA disapproval or such longer time as may be specified in writing by EPA in its discretion. Exercise of EPA's discretion with respect to such period shall not be subject to the dispute resolution procedures set forth in Section XII of this Consent Order. Approval, disapproval and/or modification by EPA of the subsequent RAP submission shall be according to the provisions of Paragraph 8.9 below.

8.6 Within ten (10) business days of receipt from EPA of written approval to proceed with implementation of the EPA-approved RAP ("written approval to proceed"), the Respondent shall commence implementation of such RAP and complete it in accordance with the RAP and the schedule therein. In the event EPA determines that any portion of the response action performed is deficient, and EPA requires Respondent to correct or re-perform such portion of the response action pursuant to this Consent Order, Respondent shall correct or re-perform such response action or portion of the response action in accordance with a schedule provided by EPA.

8.7 Beginning fourteen (14) calendar days subsequent to the date of receipt of EPA approval of the RAP and every fourteen (14) calendar days thereafter, or such longer interval as may be determined in writing by the EPA Project Coordinator designated pursuant to Section IX, and until EPA advises Respondent that the Work is complete, the Respondent shall provide EPA with a progress report for each preceding 14-day period or if applicable, the period specified in writing by the EPA Project Coordinator. The progress reports shall include, at a minimum: 1) a description of the response action completed and the actions that have been taken toward achieving compliance with this Consent Order; 2) a description of all data anticipated and activities scheduled for the next 14 calendar days or, if applicable, the period specified in writing by the EPA Project Coordinator; 3) a description of any problems encountered or anticipated; 4) any actions taken to prevent or mitigate such problems; 5) a schedule for completion of such actions; 6) copies of all analytical data received during the reporting period; and 7) all modifications to the response action, RAP and schedule made in accordance with Section XIV of this Consent Order during the reporting period.

8.8 Documents, including plans, reports, sampling results and other correspondence to be submitted pursuant to this Consent Order, shall be sent by certified or overnight mail to the EPA Project Coordinator designated pursuant to Section IX.

8.9 All reports, plans, approval letters, specifications, schedules and attachments required by this Consent Order are subject to EPA approval and shall be deemed incorporated into this Consent Order upon approval by EPA. In the event that EPA approves a portion of the RAP, report or other item required to be submitted under this Consent Order, the approved portion shall be enforceable under this Consent Order. In the event of conflict between this Consent Order and any document attached hereto, incorporated in or enforceable hereunder, the provisions of this Consent Order shall control. In the event that EPA disapproves any required submission, EPA will (1) specify the deficiencies in writing, and/or (2) submit its own modifications to the Respondent to accomplish the Work outlined in paragraph 8.3 above. Respondent shall amend and submit to EPA a revised submission that responds to and corrects the specified deficiencies within ten (10) business days of receipt of EPA disapproval or such longer time as may be specified by EPA in its discretion. Exercise of EPA's discretion with respect to such period shall not be subject to the dispute resolution procedures set forth in Section XII of this Consent Order.

In the event that EPA submits its own modifications to the Respondent, the Respondent is hereby required to incorporate such modifications; provided, however, EPA shall not issue modifications requiring Work beyond the general scope of activities described in paragraph 8.3.

Any non-compliance with EPA-approved reports, plans, specifications, schedules, attachments, or submission of deficient revisions following EPA disapproval, or non-compliance with an EPA-required modification shall be considered a failure to comply with a requirement of this Consent Order. Determination(s) of non-compliance will be made by EPA.

8.10 In addition to the information and documents otherwise required by this Consent Order, Respondent shall provide to EPA, upon written request, any and all information and documents in its possession, custody or control related to the Site including, but not limited to, Site analytical data (including raw data); Site safety data; Site monitoring data; operational logs; copies of all hazardous waste manifests (including copies of all hazardous waste manifests signed upon receipt of the hazardous wastes by a licensed treatment, storage or disposal facility); the identity of treatment, storage and/or disposal facilities used; the identity of transporters used; the identity of any contractors, subcontractors and supervisory personnel used; information and documents concerning Respondent's compliance with Quality Assurance and Quality Control requirements of this Consent Order; information and documents relating to Respondent's efforts to secure access; and information and documents relating to any project delays. Nothing herein shall be interpreted as limiting the inspection and information-gathering authority of EPA under Federal law. Respondent is entitled to make certain claims of privilege or confidential business information which are set forth in Section XI below.

8.11 Within ninety (90) calendar days of the date Respondent concludes it has completed implementation of the RAP and the items identified in paragraph 8.3, Respondent shall submit a written Final Report to EPA, subject to EPA approval described in paragraph 8.9 above. The written report shall detail the work undertaken to implement the RAP and the items identified in paragraph 8.3, and shall be certified by Respondent in accordance with the terms of Section XXII of this Consent Order. EPA will review the adequacy of Respondent's implementation of the RAP and accomplishment of items specified in paragraph 8.3 above. EPA will notify Respondent, in writing, of any discrepancies in the Final Report or deficiencies in the execution of the RAP and the items identified in paragraph 8.3 and the actions required to correct such discrepancies or deficiencies. Within ten (10) business days of receipt of notification by EPA, or as otherwise specified by EPA, Respondent shall, as directed by EPA, amend the Final Report, develop an additional plan or amend the existing RAP to address such discrepancies or deficiencies. Any additional plan or amendment to the RAP will be subject to the approval procedures outlined in paragraphs 8.5 and 8.9 above. Respondent shall perform all actions approved by EPA in a manner consistent with the NCP and all applicable Federal laws and regulations, as required by the NCP.

8.12 Respondent shall not handle or remove any hazardous substances from the Site except in conformance with the terms of this Consent Order and all applicable Federal, State and local laws, ordinances and regulations, as required by the NCP. Any hazardous substance, pollutant or contaminant transferred for disposal off-site as a result of this Consent Order must be taken to a

facility acceptable under EPA's Off-Site Rule, 40 CFR §300.440, and in accordance with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3).

8.13 Respondent shall not commence any Work except in conformance with the terms of this Consent Order. Respondent shall not commence implementation of the RAP developed hereunder until receiving written EPA approval to proceed pursuant to paragraph 8.6.

8.14 Respondent shall immediately notify EPA's Project Coordinator and the National Response Center [(800) 424-8802] and any other party required by law in the event of any action or occurrence during the pendency of this Consent Order which causes or threatens to cause an additional release of hazardous substances, pollutants or contaminants on, at or from the Site, or which may create a danger to public health, welfare or the environment.

8.15 In the event that EPA believes that response action or other activities at the Site by the Respondent are causing or may cause a release or potential release of hazardous substances, or are a threat to public health or welfare or to the environment, EPA may, in its discretion, immediately halt or modify such response actions or other activities to eliminate or mitigate such actual or potential releases or threats.

## **IX. DESIGNATED PROJECT COORDINATORS**

9.1 Respondent shall designate a Project Coordinator and shall notify EPA of such designation no later than five (5) business days after the effective date of this Consent Order. Designation of a Project Coordinator shall not relieve Respondent of its obligation to comply with the requirements of the Consent Order. The Respondent's Project Coordinator shall be a technical and/or managerial representative of the Respondent and may be a contractor and/or consultant; provided, however, the Respondent's Project Coordinator shall not be its legal representative in this matter. The Project Coordinator for EPA designated pursuant to this Section and the Project Coordinator for the Respondent shall be responsible for overseeing the Work. To the maximum extent possible, communications between the Respondent and EPA and all documents concerning the activities performed pursuant to the terms and conditions of this Consent Order, including plans, reports, approvals and other correspondence, shall be directed to the Project Coordinators.

9.2 The Project Coordinator for EPA is:

Ronnie M. Davis  
Remedial Project Manager  
U.S. Environmental Protection Agency  
Removal Enforcement and Oil Section (3HS23)  
1650 Arch Street  
Philadelphia, PA 19103

(215) 814-3230 phone

(215) 814-3002 fax

9.3 Respondent shall have the right to change its Project Coordinator. Such a change shall be accomplished by notifying the EPA Project Coordinator in writing at least five (5) calendar days prior to the change.

9.4 EPA shall have the right to change its Project Coordinator at any time without prior notice to Respondent. EPA's intent is to notify the Respondent as soon as practicable following any such change of its Project Coordinator.

9.5 The absence of the EPA Project Coordinator from the Site shall not be cause for the stoppage or delay of Work except when such stoppage or delay is specifically directed by EPA.

9.6 The EPA Project Coordinator shall have the authority to halt Work or other activities performed by Respondent at the Site in order to eliminate a release or threat of release of hazardous substances. Further, the EPA Project Coordinator shall have the authority to modify the Work to address conditions that the EPA Project Coordinator concludes constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment. Such determinations shall not be disputable under the Dispute Resolution provisions of this Order, but notwithstanding any other provision of this Order, Respondent shall retain any rights they may have concerning review of, or concerning recovery of costs of complying with, any such modification. Direction by the EPA Project Coordinator may be given verbally or in writing. If such direction is given verbally, the EPA Project Coordinator will later memorialize such direction, and the reasons therefore, in writing.

## **X. QUALITY ASSURANCE**

The Respondent shall use quality assurance, quality control, and chain of custody procedures in accordance with the following documents while conducting all sample collection and analysis activities required by this Consent Order:

(a) "EPA NEIC Policies and Procedures Manual" (EPA Document 330/9-78-001-R (revised August 1991));

(b) "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," (QAMS-005/80 (December 1980)); and

(c) "QA/QC Guidance for Removal Activities," (EPA/540/G-90/004 (April 1990)).

The Respondent shall consult with EPA in planning for, and prior to, all sampling and analysis required by the approved RAP. The Respondent shall use a laboratory(s) which has a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80.

## **XI. ACCESS**

11.1 As of the effective date of this Consent Order, Respondent shall provide to EPA and its employees, agents, consultants, contractors and other authorized and/or designated representatives, for the purposes of conducting and/or overseeing the Work, access to all property owned or controlled by Respondent wherein Work must be undertaken. Such access shall permit EPA and its employees, agents, consultants, contractors and other authorized and designated representatives to conduct all activities described in paragraph 11.3 of this Consent Order.

11.2 To the extent that property wherein Work must be undertaken is presently owned or controlled by parties other than the Respondent, the Respondent shall use its best efforts to obtain Site access agreements from the present owners. Such access agreements shall be finalized as soon as practicable but no later than 30 calendar days after receiving EPA's written approval to proceed. Such agreements shall provide reasonable access for the Respondent and their employees, agents, consultants, contractors and other authorized and designated representatives to conduct the work, and for EPA and its designated representatives to conduct the activities outlined in paragraph 11.3 below. In the event that any property owner refuses to provide such access or access agreements are not obtained within the time designated above, whichever occurs sooner, the Respondent shall notify EPA at that time, in writing, of all efforts to obtain access and the circumstances of the failure to obtain such access. EPA may then take steps to provide such access. Respondent shall reimburse the United States for all costs incurred in obtaining access which are not inconsistent with the NCP. Best efforts shall include, but not be limited to, agreement to reasonable conditions for access and/or the payment of reasonable fees.

11.3 In accordance with law and regulation, as appropriate, EPA and its employees, agents, contractors, consultants and other authorized and designated representatives shall have the authority to enter and freely move about the location where the response actions and/or Work is being performed at all reasonable times for the purposes of, inter alia: inspecting Work, records, operating logs and contracts related to the Site; reviewing the progress of the Respondent in carrying out the terms of this Consent Order; conducting such tests as EPA deems necessary; using a camera, sound recording or other documentary type equipment; and verifying the data submitted to EPA by the Respondent. The Respondent shall permit such persons to inspect and copy all records, files, photographs, documents and other writings, including all sampling and monitoring data, in any way pertaining to the Work.

11.4 Respondent may make a claim of business confidentiality for information submitted pursuant to this Consent Order in the manner described in 40 C.F.R. § 2.203(b). Such an

assertion shall be adequately substantiated in accordance with 40 C.F.R. § 2.204(e)(4) at the time the assertion is made. Information subject to a confidentiality claim shall be made available to the public by EPA only in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such claim of business confidentiality accompanies the information when it is submitted or made available to EPA, the submitted information may be made available to the public by EPA without further notice to Respondent.

11.5 The Respondent may withhold those records and documents covered by any privilege or protection recognized under federal law and applied by federal courts in actions commenced by the United States. In the event that the Respondent withholds a document as privileged or protected, the Respondent shall provide EPA with the title of the document, the date of the document, the name(s) of the author(s) and addressee(s)/recipient(s), a description of the nature of the document and identification of the privilege or protection asserted at the time such document is required to be provided to EPA.

11.6 No claim of confidentiality, privilege or protection shall be made regarding any data required to be submitted pursuant to this Consent Order including, but not limited to, sampling, analytical, monitoring, hydrogeologic, scientific, chemical or engineering data, or documents or information evidencing conditions at or around the Site. Nor shall such claims be made for analytical data; Site safety data; Site monitoring data; operational logs; hazardous waste manifests; identities of treatment, storage and/or storage facilities used; identities of transporters used; identities of any contractors or subcontractors used in performing work required by this Consent Order.

11.7 Notwithstanding any provision of this Consent Order, EPA retains all of its access and information-gathering authorities and rights under CERCLA and any other applicable statute and regulation.

## **XII. DISPUTE RESOLUTION**

12.1 Except as provided elsewhere in this Consent Order, if the Respondent objects to any EPA notification of deficiency, disapproval or other EPA action taken pursuant to this Consent Order, including billings for oversight costs, the Respondent shall notify EPA in writing of its objection(s) within fourteen (14) calendar days of receipt of such notification or action with respect to matters not involving oversight costs and within thirty (30) calendar days of receipt of any billing for oversight costs.

12.2 EPA and the Respondent shall have an additional fourteen (14) calendar days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this fourteen (14) day period, EPA will provide a written statement of its decision. Respondent's obligations under this Consent Order shall not be tolled by submission of any objection for dispute resolution under this Section XII.



12.3 In order to prevail in any dispute regarding oversight costs, Respondent must demonstrate that the costs have been calculated incorrectly or have been incurred in a manner inconsistent with the NCP.

12.4 Following resolution of the dispute, as provided by this Section XII, Respondent shall perform the Work that was the subject of the dispute in accordance with the agreement reached or EPA's decision. To the extent that Respondent does not prevail upon resolution of any dispute involving contested costs, Respondent shall submit to EPA, within fourteen (14) calendar days of receipt of such resolution, all outstanding oversight costs determined to be owed to EPA, including any accrued interest, as specified in paragraph 13.1 below.

12.5 Notwithstanding any other provision of this Consent Order, no action or decision by EPA pursuant to this Consent Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

### **XIII. DELAY IN PERFORMANCE AND STIPULATED PENALTIES**

13.1 For each day, or portion thereof, that Respondent fails to comply with any requirement of this Consent Order at the time and in the manner set forth herein, the Respondent shall be liable upon demand to EPA for the sums set forth below as stipulated penalties. Checks shall be made payable to the "Hazardous Substance Superfund" and shall be transmitted to:

U.S. Environmental Protection Agency, Region III  
Attention: Superfund Accounting  
P.O. Box 360515  
Pittsburgh, PA 15251-6515

Payment shall be made by cashier's or certified check within thirty (30) calendar days of receipt of demand. Interest at the rate of the current annualized treasury bill rate shall begin to accrue on the unpaid balance at the end of the thirty day period pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). A copy of the transmittal letter shall be sent simultaneously to the EPA Project Coordinator at the address identified in Section IX of this Consent Order and to: EPA Region III Hearing Clerk (3RC00), 1650 Arch Street, Philadelphia, PA 19103.

13.2 Stipulated penalties shall accrue in the amount of \$1,500 per calendar day per violation. Neither the accrual of nor demand for stipulated penalties set forth in this Section XIII shall preclude EPA from pursuing other penalties or sanctions available to EPA for Respondent's failure to comply with the requirements of this Consent Order.

### **XIV. FORCE MAJEURE AND NOTIFICATION OF DELAY**

14.1 The Respondent, through its Project Coordinator, shall notify EPA of any delay or anticipated delay in achieving compliance with any requirement of this Consent Order. Such notification shall be made verbally as soon as possible but not later than two (2) calendar days after Respondent becomes aware or should have become aware of any such delay or anticipated delay, and in writing no later than seven (7) calendar days after Respondent becomes aware, or should have become aware, of such delay or anticipated delay. Such written notification shall be certified by the Project Coordinator in accordance with Section XXII of this Consent Order and shall fully describe the nature of the delay, including how it may affect the Work, RAP and schedule; the actions that will be or have been taken to mitigate, prevent and/or minimize further delay; and the timetable according to which the future actions to mitigate, prevent and/or minimize the delay will be taken. The Respondent shall ensure that its Project Coordinator provides Respondent with immediate notification of any project delays. The Respondent shall adopt all reasonable measures to avoid and minimize such delay.

14.2 To the extent Respondent intends to claim that any delay or anticipated delay described by Respondent in accordance with paragraph 14.1 was or will be caused by circumstances beyond its control, Respondent shall, within fourteen (14) calendar days after Respondent becomes aware, or should have become aware, of such delay or anticipated delay, submit to EPA a "Notice of Force Majeure" in which Respondent fully demonstrates that the delay was caused by circumstances beyond its control which could not have been overcome by due diligence, the necessity of the proposed length of the delay, and that the Respondent has taken and is taking all reasonable measures to avoid and minimize delay. The Respondent shall have the burden of proving these facts to EPA. Any "Notice of Force Majeure" shall be certified by a responsible official of Respondent pursuant to paragraph 22.1(b) of this Consent Order.

14.3 Any such delay that EPA determines (1) has resulted or will result from circumstances beyond the control of the Respondent and (2) that could not and cannot be overcome by due diligence on the Respondent's part, shall not be deemed to be a violation of Respondent's obligation(s) under this Consent Order, and shall not subject Respondent to stipulated penalties under this Consent Order for that particular delay. In such event, the schedule affected by the delay shall be extended for a period EPA deems necessary to complete the Work on an expedited basis, but no greater than a period equal to the delay directly resulting from such circumstances. Increased costs of performance of the requirements of this Consent Order or changed economic circumstances shall not be considered circumstances beyond the control of the Respondent. Delay in one item or component of Work or the RAP does not justify delay in timely achievement of other items or components. Each delay must be separately addressed and substantiated according to the provisions of paragraphs 14.1 and 14.2 above.

14.4 Failure of the Respondent to comply with the notice requirements of paragraphs 14.1 and 14.2 above shall constitute a waiver of the Respondent's right to invoke the benefits of this Section with respect to that event.

14.5 In the event that EPA and the Respondent cannot agree that any delay in compliance with the requirements of this Consent Order has been or will be caused by circumstances beyond the control of the Respondent that cannot be overcome by due diligence, the dispute shall be resolved in accordance with the provisions of Section XII (Dispute Resolution) of this Consent Order.

## **XV. RESERVATION OF RIGHTS**

15.1 Except as expressly provided in this Consent Order, (1) each party reserves all rights, claims, interests and defenses it may otherwise have, (2) nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Consent Order, including the right to seek injunctive relief and/or the imposition of statutory penalties, and (3) nothing herein shall prevent Respondent from asserting cost recovery or contribution claims against any third party.

15.2 As provided by this Consent Order, EPA expressly reserves its right to disapprove of Work performed by Respondent; to halt Work being performed by Respondent if Respondent has not complied with an approved RAP or this Consent Order, or at any time EPA deems necessary to protect public health, welfare or the environment and to perform such Work; to request and require hereunder that Respondent correct and/or re-perform any and all Work disapproved by EPA; and/or to request or require by separate enforcement action that Respondent perform response actions in addition to those required by this Consent Order. Further, EPA reserves the right to undertake response action at any time EPA deems appropriate. In the event EPA requires Respondent, and Respondent declines, to correct and/or re-perform Work that has been disapproved by EPA and/or to perform response actions in addition to those required by this Consent Order, EPA reserves the right to undertake such actions and seek reimbursement of the costs incurred and/or to seek any other appropriate relief. In addition, EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under the NCP and to seek reimbursement for any costs incurred and/or take any other action authorized by law.

15.3 EPA reserves the right to bring an action against the Respondent for recovery of all recoverable costs incurred by the United States related to this Consent Order which are not reimbursed by the Respondent, as well as any other costs incurred by the United States in connection with response actions conducted at the Site.

15.4 This Consent Order concerns certain response actions (Work described in Section VIII, above) concerning the Site. Such response actions might not fully address all contamination at the Site. Subsequent response actions which may be deemed necessary by EPA are not addressed by this Consent Order. EPA reserves all rights including, without limitation, the right to institute legal action against Respondent and/or any other parties in connection with the performance of any response actions not addressed by this Consent Order.

15.5 Nothing in this Consent Order shall limit the authority of the EPA On-Scene Coordinator as set forth in the NCP and CERCLA.

#### **XVI. OTHER CLAIMS**

16.1 Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation not bound by this Consent Order for any liability it may have relating in any way to the generation, storage, treatment, handling, transportation, release or disposal of any hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from the Site.

16.2 This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

16.3 By consenting to the issuance of this Consent Order, the Respondent waives any claim to reimbursement it may have under Sections 106(b), 111 and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611 and 9612.

#### **XVII. OTHER LAWS**

17.1 All Work shall be undertaken in accordance with the requirements of all applicable and/or relevant and appropriate local, State and Federal laws and regulations, as required by CERCLA and the NCP.

17.2 Nothing herein shall relieve Respondent from any obligations it has under any applicable local, State, or Federal law or regulation.

#### **XVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION**

18.1 The effective date of this Consent Order shall be the date on which it is signed by EPA.

18.2 This Consent Order may be amended by mutual agreement of EPA and the Respondent. Such amendments shall be in writing and shall have as their effective date the date on which such amendments are signed by EPA. Modifications to the EPA-approved RAP and its implementation may be made by mutual agreement of the Project Coordinators. Such modifications shall be memorialized in writing by the Project Coordinators.

18.3 Any reports, plans, specifications, schedules, or other submissions required by this Consent Order are, upon approval by EPA, incorporated into this Consent Order. Any non-compliance

with such EPA-approved reports, plans, specifications, schedules, or other submissions shall be considered non-compliance with the requirements of this Consent Order and will subject the Respondent to the requirements of Section XIII (Delay in Performance and Stipulated Penalties), above. Determinations of non-compliance will be made by EPA.

18.4 No informal advice, guidance, suggestions or comments by EPA regarding reports, plans, specifications, schedules or other submissions by the Respondent or the requirements of this Consent Order will be construed as relieving the Respondent of its obligation to obtain formal approval when required by this Consent Order, and to comply with the requirements of this Consent Order unless formally modified.

### **XIX. LIABILITY OF THE UNITED STATES**

Neither the United States nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondent, or of its employees, agents, servants, receivers, successors or assigns, or of any persons including, but not limited to, firms, corporations, subsidiaries, contractors or consultants in carrying out the Work, nor shall the United States or any agency thereof be held out as a party to any contract entered into by Respondent in carrying out the Work.

### **XX. INDEMNIFICATION AND HOLD HARMLESS**

Respondent agrees to indemnify and hold harmless the United States, its agencies, departments, agents, officers, employees and representatives from any and all causes of action caused by any acts or omissions of Respondent or its contractors in carrying out the Work required by this Consent Order.

### **XXI. REIMBURSEMENT OF COSTS**

21.1 EPA shall submit to Respondent annual and/or a final accounting(s) of oversight costs, as defined in paragraph 26.4, incurred by the United States with respect to this Consent Order.

21.2 Respondent shall, within sixty (60) calendar days of receipt of the accounting, remit a check for the amount of those costs made payable to the "Hazardous Substance Superfund." Interest at a rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) shall begin to accrue on the unpaid balance from the day after the expiration of the sixty-day period notwithstanding any dispute or an objection by Respondent to any portion of the costs. Checks shall specifically reference the Site and shall be transmitted as specified in Section XIII of this Consent Order.

**XXII. CERTIFICATION OF COMPLIANCE**

22.1 (a) Unless otherwise required by the terms of this Consent Order, any notice, report, certification, data presentation or other document submitted by Respondent under or pursuant to this Consent Order which discusses, describes, demonstrates or supports any finding or makes any representation concerning Respondent's compliance or non-compliance with any requirement(s) of this Consent Order shall be certified by the Respondent, a responsible official of the Respondent or by the Project Coordinator for the Respondent. The term "responsible official" means: (i) a president, secretary, treasurer or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$35 million (in 1987 dollars when the consumer price index was 345.3), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. The responsible official of a partnership or sole proprietorship means the general partner or the proprietor, respectively.

(b) The written Final Report required by paragraph 8.11 of this Consent Order, any written notification described in paragraph 12.1 of this Consent Order and any "Notice of Force Majeure" described in paragraph 14.2 of this Consent Order shall be certified by the Respondent or a responsible official of Respondent.

22.2 The certification required by paragraph 22.1 of this Consent Order shall be in the following form:

I certify that the information contained in or accompanying this (specify type of submission) is true, accurate and complete.

I am aware that there are significant penalties for submitting false information including the possibility of fines and imprisonment for knowing violations.

Signature: \_\_\_\_\_

Name (print): \_\_\_\_\_

Title: \_\_\_\_\_

22.3 Submission of documents pursuant to this Consent Order which are found by EPA to contain false information shall constitute a failure to comply with this Consent Order and shall subject Respondent to, among other things, stipulated penalties whether or not a responsible official of Respondent has certified the document.

**XXIII. SHIPMENT OF HAZARDOUS SUBSTANCES**

23.1 Respondent shall, prior to any off-site shipment of hazardous substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's Project Coordinator of such shipment of hazardous substances. However, the requirement to notify EPA of shipments shall not apply to any such off-site shipments when the total volume of all such shipments will not exceed ten (10) cubic yards. Notifications to States in those circumstances shall be governed by applicable state law.

23.2 The notification required by paragraph 23.1 shall be in writing and shall include the following information, where available: (1) the name and location of the facility to which the hazardous substances are to be shipped; (2) the type and quantity of the hazardous substances to be shipped; (3) the expected schedule for the shipment of the hazardous substances; and (4) the method of transportation of the hazardous substances. Respondent shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state or to a facility in another state.

23.3 The identity of the receiving facility and state will be determined by Respondent. Respondent shall provide all relevant information, including information required by paragraph 23.1, above, relating to the off-site shipments as soon as practicable but no later than one (1) business day before the hazardous substances are actually shipped.

**XXIV. RECORD RETENTION**

24.1 Respondent shall preserve all documents and information relating to the Work performed under this Consent Order, or relating to the hazardous substances found at or released from the Site, for six (6) years following completion of the response action required by this Consent Order. In addition, Respondent shall also retain, as appropriate, monthly reports on analytical services pursuant to OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to Potentially Responsible Party-Lead Superfund Sites," (July 6, 1992). At the end of this six year period and thirty (30) days before any document or information is destroyed, Respondent shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA.

**XXV. POST REMOVAL SITE CONTROL**

Respondent agrees to maintain the integrity of the response action pursuant to the arrangement proposed in paragraph 8.3 (i), and approved by EPA pursuant to paragraph 8.9, above.

## **XXVI. DEFINITIONS**

26.1 "Business days" as used in this Order shall mean every day of the week except Saturdays, Sundays and federal holidays.

26.2 "Calendar days" as used in this Order shall mean every day of the week, including Saturdays, Sundays and federal holidays.

26.3 "Days" as used herein shall mean "calendar days" unless specified otherwise.

26.4 "Oversight costs" as used in this Order shall consist of all costs, including indirect costs, incurred by EPA, its employees, agents, contractors, consultants and other authorized and/or designated representatives in connection with EPA's oversight of the Work and further shall mean administrative, enforcement inspection, and investigative costs paid by EPA, its agents, or contractors in connection with EPA's oversight of the Work performed by the Respondents under the terms of this Consent Order. Oversight costs shall include, but not be limited to, time and travel costs of EPA personnel, its agents, or contractors and associated indirect costs, contractor costs, costs of compiling cost documentation, compliance monitoring, collection and analysis of split samples, site visits, community relations activities, interpretation of Consent Order provisions, discussions regarding disputes that may arise as a result of this Consent Order, and review and approval or disapproval of reports that are undertaken as part of oversight activities. Oversight costs shall also include the administrative costs of the EPA finance and program staff in preparing the oversight billing.

26.5 "United States" as used herein shall mean the U.S. Environmental Protection Agency and any other departments or agencies of the United States, except that it shall not include, for the purposes of this Consent Order, the U.S. Department of the Navy or the Norfolk Naval Shipyard.

26.6 "Site" as used herein shall mean that portion of the AWI Property known as the Acetylene Area and the ABM Area. The Acetylene Area and the ABM Area are contiguous and collectively occupy approximately 3 acres located on the parcel east of Burton's Point Road along the Atlantic Wood Industries southern property boundary. (See Attachment A). The Site is bounded to the west by Burton's Point Road, the east by the Southern Branch of the Elizabeth River.

26.7 All terms not defined herein shall have the meanings set forth in CERCLA and the NCP.



**XXVII. NOTICE OF COMPLETION**

When EPA determines, after EPA's review and approval of the Final Report required pursuant to paragraph 8.11 of this Consent Order, that all response action specified in Section VIII of this Consent Order has been fully performed, and upon receipt of costs and penalties assessed by EPA, with the exception of any continuing obligations required by this Consent Order, including those requirements specified in Sections XV ("Reservation of Rights"), XVI ("Other Claims"), XIX ("Liability of the United States"), XX ("Indemnification and Hold Harmless"), XXIV ("Record Retention") and XXV ("Post Removal Site Control"), EPA will provide a notice of completion to the Respondent. Such notice shall state that to the best of EPA's knowledge the Work was performed in a manner not inconsistent with the National Contingency Plan.

FOR THE RESPONDENT:

BY:\_\_\_\_\_

DATE:\_\_\_\_\_

Name:

Title:

FOR THE EPA:

BY:\_\_\_\_\_

DATE:\_\_\_\_\_

Donald S. Welsh  
Regional Administrator  
Region III  
U.S. Environmental Protection  
Agency